

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES**

ALLWAYS EAST TRANSPORTATION, INC.

and

Cases 03-CA-128669
03-CA-133846

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 445

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for the General Counsel.*

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for the Respondent.*

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for the Charging Party.*

DECISION

STATEMENT OF THE CASE

SUSAN A. FLYNN, Administrative Law Judge. This case was tried in Poughkeepsie, New York, on December 15–16, 2014, March 30–April 1, 2015, and April 22–23, 2015. The Charging Party Union filed the charges on May 15 and August 1, 2014, respectively, and the General Counsel issued the complaint on September 30, 2014.

The complaint alleges that the Respondent is a successor employer that has failed and refused to recognize and bargain with the Union, and that it unilaterally changed the wage rates of unit employees. It further alleges that the Respondent terminated an employee without affording the Union prior notice and an opportunity to bargain, and failed and refused to respond to the Union's request for information. The Respondent's answer denies all material allegations.

After the trial, the General Counsel and the Respondent filed briefs, which I have read and considered. Based on the entire record in this case,¹ including my observation of the demeanor of the witnesses, I make the following

¹ The Respondent filed an unopposed motion to correct the transcript. The motion is granted.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Allways East Transportation, Inc., is a corporation that provides schoolbus transportation for special education and special needs children in Westchester and Dutchess Counties, New York. It is headquartered in Yonkers, New York, with a secondary place of business in Wappingers Falls, New York, at the relevant time period. In the 12 months preceding September 30, 2014, the Respondent derived gross revenues in excess of \$250,000 at its Wappingers Falls facility, and purchased and received at that facility products, goods, and materials valued in excess of \$5000 directly from points outside the State of New York. Accordingly, I find, and the Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (the Act).

I further find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Allways East Transportation, Inc. (the Respondent), is a relatively small school bus transportation company, headquartered in Yonkers. It was founded by Judith Koller and her now-deceased husband. Judith is now president of the Company, and her daughter, Marlaina Koller, is vice president. The Company specializes in transporting special education and special needs students. At the relevant time, the Company employed approximately 233 drivers and monitors in Yonkers, where it provided services for Westchester County. There are approximately 17 other employees at Yonkers, including an office manager, fleet maintenance manager, operations manager, mechanics, payroll staff, clerical staff, and dispatcher/drivers. The Company has always been non-union.

Prior to April 2014, Durham School Services, a large national company, had provided school bus service for special education and special needs children in Dutchess County, as well as for general education children. In 2012, the Respondent had submitted a bid to provide school bus service for special education and special needs children in response to a Request for Proposal by the Dutchess County Department of Health. The Respondent lost that bid; however, Dutchess County contacted the Respondent in early 2014 and requested that it take over the contract almost immediately, during the spring term, due to poor performance by Durham. Although the Respondent had little time to prepare, it agreed to begin service in April 2014. Dutchess County terminated the contract with Durham by letter dated February 28, 2014.

With Durham, there had been 52 routes for those special education and special needs children. The Respondent had to purchase the buses and equipment to service those routes, as well as hire drivers and monitors. Subsequently, when the Respondent evaluated the routes, it was determined that 65 routes were necessary. Additionally, the Respondent was required by the contract to lease property in Dutchess County as a satellite yard.

B. Preparations to Service Dutchess County

Before taking over this Dutchess County contract, the Respondent had serviced only Westchester County schools. It had approximately 5 weeks to prepare to begin providing service for Dutchess County. It purchased new buses and new equipment including child safety seats. It leased property in Dutchess County as a satellite yard, a requirement of the contract. It modified its insurance and workers' compensation policies to cover the new facility. It hired new drivers and monitors² for the Dutchess County routes.

The Respondent participated in a job fair at a Poughkeepsie hotel on 2 weekends in March 2014 in order to recruit needed drivers and monitors. Judith and Marlaina Koller were present, along with management from Yonkers. Marlaina made a presentation about the Company and answered any questions. Interested applicants submitted applications. Some applicants had worked for Durham; others never had, but may have worked for another bus company. Dutchess County had recommended that the Respondent hire drivers and monitors who worked for Durham, who were familiar with the children, their parents, and teachers, and the routes, since the children were special needs students. Those individuals were instructed to note that experience on their applications.

Subsequently, Judy and Marlaina reviewed the applications. Physical examinations were then scheduled for the candidates selected as drivers, conducted on April 7 by its Yonkers' physician at the new Wappingers Falls facility. Additional paperwork was also completed by the selectees at that time. Successful candidates were then interviewed by Marlaina. Upon hire, employees were notified of their routes and provided the company policy handbook. Park-out requests³ were also approved.

On April 22, 2014, the Respondent began transporting Dutchess County special education and special needs students. As of the week ending May 1, 2014, there were 82 new drivers and monitors assigned to the Wappingers Falls facility, as well as 2 driver/dispatchers who transferred from Yonkers when promoted. Of those 82 new hires, 62 had worked for Durham when hired by the Respondent and quit when offered employment with the Respondent.

Despite hiring those new drivers and monitors, the Respondent had an insufficient number of drivers and monitors for the Dutchess County routes, so the Respondent shuttled 8 to 10 drivers and monitors between Yonkers and Wappingers Falls, on a daily basis. Additionally, some Yonkers drivers and monitors preferred to stay at a local hotel while temporarily working on the Dutchess County routes.

² Monitors are aides who work as a team with the busdriver. They assist the children in boarding and disembarking, ensure the students' safety on the bus, and handle health and behavioral situations that may arise during transport. To that end, they develop relationships with the children and their parents.

³ When a driver keeps the bus at his/her residence overnight, rather than parking it at the Company's facility, it is called a park-out.

Some, but not all, drivers and monitors who had worked together as a team at Durham were assigned to work together by the Respondent. Some, but not all, drivers and monitors who had worked at Durham were assigned by the Respondent to the same or similar routes as they had at Durham. Some drivers and monitors who had worked at Durham had a different number of daily routes assigned by the Respondent.

No supervisors are permanently assigned to Wappingers Falls. The two driver/dispatchers, Aldo Leon and Carlos Rivera, perform dispatcher duties and drive buses when needed. They relay information between bus drivers and parents or teachers, and to management in Yonkers. In addition, when an employee calls out on a given day, the dispatchers find an available driver or monitor to cover for them, or drive the route themselves. The various managers from Yonkers are responsible for operations at Wappingers Falls. Initially, Judith, Marlaina, and Operations Manager Elida Wilson came to Wappingers Falls fairly frequently to oversee the new facility. Fleet Manager Frank Ortiz and Office Manager ToniAnn Francisco came to Wappingers Falls as needed. Eventually, such close supervision was no longer necessary and management now oversees the facility primarily from their offices in Yonkers.

C. Union Contact with the Respondent

Durham employed approximately 185 full-time and part-time drivers and monitors in Dutchess County. They are unionized, members of International Brotherhood of Teamsters, Local 445 (the Union). Durham and the Union entered into collective-bargaining agreements, the most recent of which was effective from September 2, 2012, to August 31, 2018.

Since Durham continued to provide general education school bus transportation services for Dutchess County after the Respondent took over the special education and special needs contract, the Union continued to represent the drivers and monitors employed by Durham. Further, it believed it continued to represent unit members who were now employed by the Respondent. To that end, the Union (Business Agent Lori Polesel and Secretary/Treasurer Adrian Huff) called Marlaina and had a brief conversation, to introduce themselves and request a meeting. The Union then emailed Marlaina on March 10, 2014, proposing dates for such a meeting. Then, on April 16, 2014, it sent her a letter requesting that the Respondent recognize the Union as the collective-bargaining representative of the drivers and monitors, and bargain collectively with the Union. The Respondent did not respond. On May 14, Polesel and Huff went to Yonkers to try to meet with Marlaina but were told she was not there.

D. The Respondent's Operations

All of the Respondent's managers are assigned to, and work from, the Yonkers facility. They go to Wappingers Falls as needed, such as for weekly delivery of paychecks.

All hiring, firing, and discipline decisions are made by Judith and/or Marlaina, in Yonkers. All payroll, human resources, and labor relations services are performed in Yonkers. All personnel files are maintained in Yonkers. Wappingers Falls' monthly attendance sheets, payroll cards, and DOT reports (daily pretrip cards completed by drivers) are sent to Yonkers for processing and retention. All employees are subject to the same employee policies and handbook. All drivers and monitors are guaranteed a minimum workweek of 22.5 hours. They

are paid according to the same pay scales and receive the same benefits. All accounting, billing, and ordering of supplies and equipment is done in Yonkers. Bus routes are created and modified in Yonkers, and route assignments are made in Yonkers.

- 5 There is one maintenance facility, in Yonkers, for all maintenance, servicing, and repairs. An employee at Wappingers Falls does minor servicing such as refilling vehicle fluids and washing windows. Drivers or driver/dispatchers bring the buses down to Yonkers unless the vehicle is disabled. In such instances, repairs may be made at a local service station.
- 10 There is one State and Federal DOT inspection number for both yards, and one 19a school bus transportation certificate registration account for both yards. The Respondent has one insurance policy for all buses, at both sites, and all are registered and insured in Yonkers. There is one liability insurance policy and one OWCP policy.
- 15 The same 19a trainer is used to certify drivers at both yards, and all 19a training is conducted at Yonkers. The Respondent shuttles Wappingers Falls drivers to Yonkers for that training. All safety classes are conducted as one group at Yonkers. The same doctor is employed for all drivers' annual physicals, as well as for prehire physicals. Employees from both facilities are pooled as one group for random mandatory D&A testing. All social events are for employees
- 20 at both locations, and are held in the Yonkers area.

E. Employees' Terms and Conditions of Employment

- 25 The terms and conditions for employees who used to work at Durham changed significantly. They are subject to new personnel policies and different benefits. Wages were increased for most. There is no seniority with the Respondent, and they did not receive credit for their service at Durham. They have new buses and new equipment. Most have modified or altogether different routes than at Durham.

- 30 Almost all of the Respondent's drivers have park-outs; at Durham, only about one-third did. The drivers pick up their monitors at the monitor's home, or the monitors drive to driver's house. At Durham, most drivers picked up the monitors at the base. The fueling procedures are different. At Durham, buses were refueled at the base, while the Respondent provides drivers with keys encoded with their social security number to fuel at county fueling stations. At Durham, drivers returned to the base every day, and often between routes; at Respondent, there is
- 35 no reason to come to the facility except once a week for about 10 minutes, to pick up their paychecks and drop off paperwork.

- 40 The employees utilize different buses and equipment, communicate with different dispatchers, report to different supervisors, and have a different work location than with Durham. Some employees transport some of the same students, on similar routes, but, although this was a midsemester change, the routes were modified and some new routes added.

As there are no local supervisors, requests for leave are communicated to the dispatchers. They note the requests on a board, for the supervisors.

F. Termination of Sherry Siebert and Request for Information

Sherry Siebert was a driver for the Respondent, who had previously worked for Durham. On July 18, 2014, she was fired. She did not seek union representation and did not notify the Union of her termination. When the Union learned of her firing, Polesel contacted Marlaina via email. (GC Exh. 9(e).) She requested that Marlaina provide her with information about all terminated employees and requested to meet and discuss those actions. Marlaina did not respond.

Neither Marlaina nor Judith nor anyone else on behalf of the Respondent has ever contacted the Union regarding these matters, nor have they responded to the Union's requests to bargain or provide information.

III. LEGAL STANDARDS AND ANALYSIS

A. Respondent's Motion to Dismiss the Complaint

The Regional Director for Region 3 filed a petition for preliminary injunction pursuant to Section 10(j) of the Act in the Federal District Court for the Southern District of New York, that was denied by Judge Nelson Roman on December 1, 2014. The General Counsel has appealed that determination to the Second Circuit Court of Appeals, where it is pending.

The Respondent filed a Motion to Dismiss the instant complaint on the basis that Judge Roman's decision precludes Board jurisdiction over the matter, since he ruled that the Respondent is not a successor employer and had no obligation to recognize or bargain with the Union. The Respondent contends that Judge Roman's findings are conclusive as a matter of res judicata and estoppel.

Judge Roman's rulings are not binding on me, as the issues before me are not the same issues presented to Judge Roman, and different standards apply. The cases cited by the Respondent are not on point; no case was cited that addresses a similar situation, and I have found none.

The motion to dismiss the complaint is denied.

B. Is the Respondent a Successor Employer?

It is well settled that a successor employer is required to recognize and bargain with a union representing the predecessor's employees when there is a "substantial continuity" of operations between the two, and if a majority of the new employer's work force, in an appropriate unit, consists of the predecessor's employees when the new employer has reached a "substantial and representative complement." *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987); *In Re Dattco, Inc.*, 338 NLRB 49 (2002).

Is There Substantial Continuity of Operations?

In order for a new employer to be a successor, there must be substantial continuity of operations, as evidenced by all three of the following factors:

1. The business of both employers is essentially the same;
2. The employees of the new company are doing the same jobs in the same working conditions under the same supervisors as the predecessor; and
3. The new entity has the same production process, procedures, and products, and basically the same body of customers.

Fall River Dyeing Corp., supra at 43.

I find that none of these factors has been met.

While both companies provide school bus transportation services, Durham provides bus transportation for general education and special needs children, while the Respondent provides transportation only for special needs children. The Respondent took over the special education contract, a portion of the services Durham provided, and continues to provide, to Dutchess County. All of the Respondent's drivers must be trained and certified to transport special needs children, which is more skilled than driving a regular education bus. Further, special needs children require monitors on their buses, who utilize specialized equipment and are trained in dealing with special needs children, their various conditions, and the myriad issues which may arise on the buses.

Those drivers and monitors who were hired by the Respondent that had previously worked for Durham continued to provide school bus transportation for special needs children in the same area, but their working conditions had changed and they had none of the same supervisors. The local facility was in a different location. While Durham had two sites, in Poughkeepsie and Red Hook, the Respondent opened a new facility in Wappingers Falls. The wage rates were different, the work rules and policies had changed, and the supervisors had changed. All the Respondent's supervisors and managers are at Yonkers; none are assigned to Wappingers Falls, while Durham had supervisors at the Poughkeepsie facility. Durham had a maintenance department in Poughkeepsie; the Respondent's is in Yonkers. After Durham lost this contract, its operations continued virtually unchanged at its Poughkeepsie and Red Hook facilities.

Although the Respondent assumed responsibility to provide school bus transportation for special needs children in Dutchess County, it took over only the contract, not any portion of Durham's operations. The drivers' processes and procedures are materially different from Durham's. Most of the routes changed, being either modified somewhat or changed completely. There are more routes than under Durham. Drivers pick up the monitors at home or the monitors come to the driver's house, rather than joining them at the facility, as with Durham. Most buses are parked overnight at the driver's home, rather than at the facility, as with Durham. Drivers and monitors have different work hours than at Durham; they could have split shifts and different numbers of routes. Fueling is done at the county lot by credit card, rather than at the facility, as with Durham. Employees used to go to the Durham base on a daily basis, where they would drop off their paperwork; that is now done weekly, when they pick up their paychecks. Employees would also go to the Durham base during the day, between runs, often in order to obtain additional hours, to see if any runs were available that day. That is unnecessary with the Respondent, as employees have full schedules. Employees communicate with two dispatchers at Wappingers Falls, who are different from the dispatchers at Durham.

The Respondent had no contact with Durham, either before or after starting to service Dutchess County in April 2014. It did not take over any of Durham's facilities, it did not purchase any buses or equipment from Durham. It did not obtain any information regarding routes or employees or any other matter, nor did it obtain any records of any kind from Durham. It did not step in and take over Durham's operations; it merely took over the Dutchess County contract for special education children, operating completely independently of Durham. It did not simply begin transporting students on the same routes with the same drivers and monitors. New routes had to be configured, old ones modified, and the total number of routes increased from 52 to 65. Although some Durham employees were hired, the Respondent's hiring process was not pro forma; the Respondent conducted a genuine application and hiring process. It did not contact Durham in order to obtain recommendations about employees. Some employees were assigned similar routes as they had with Durham, but virtually all routes were changed in some respect.

Even the witnesses called by the General Counsel, who had worked for both Durham and the Respondent, testified to significant changes in their working conditions with the Respondent, including having different routes, different numbers of routes, and different numbers of hours.

In sum, many changes occurred, including leasing property, purchasing new buses and equipment, developing new routes, changing old routes, hiring new employees, and imposing new policies and procedures. Even viewed solely from the employees' perspective as urged in *Fall River*, above, it was clear that there was a new employer, that they were working under new rules and procedures, for different supervisors, and the operation was not merely a continuation of Durham's.

I find that there is no substantial continuity of operations between Durham School Services and the Respondent.

Is the Respondent's Wappingers Falls Facility an Appropriate Stand-Alone Bargaining Unit?

Although a single-facility unit is presumptively appropriate for collective bargaining, that presumption is rebuttable. The presumption is lost when the single facility is so effectively merged into a more comprehensive unit, or is so functionally integrated, that it does not have a separate identity. See *Dattco*, above. The burden is on the party opposing the appropriateness of the single-facility unit to present sufficient evidence to overcome the presumption. *J&L Plate, Inc.*, 310 NLRB 429 (1993).

A purchaser may be a successor even where it takes over only a portion of the bargaining unit, where the new unit can exist on its own as an appropriate unit. *Stewart Granite Enterprises*, 255 NLRB 569 (1981).

Further, there is nothing in the statute that requires that the proposed unit be the only appropriate unit, or the most appropriate unit, only that it be appropriate. *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), *enfd.* on other grounds 190 F.2d 576 (7th Cir. 1951); *Overnite Transportation Co.*, 322 NLRB 723 (1996).

In determining whether the presumption of appropriateness is rebutted, the Board considers such factors as community of interest; central control over daily operations and labor relations including the extent of local autonomy; the degree of employee interchange; similarity of skills, functions, and working conditions; distance between the locations; and bargaining history, if any. See *J&L Plate*, above; *D&L Transportation, Inc.*, 324 NLRB 160 (1997); *Esco Corp.*, 298 NLRB 837 (1990).

At the relevant time period, the Respondent had two facilities: Yonkers and Wappingers Falls. The company is headquartered in Yonkers, which had previously been its only facility; Wappingers Falls is merely a satellite site. All managers and supervisors are located in Yonkers. They consist of President Judith Koller, Vice President Marlaina Koller, Office Manager ToniAnn Francisco, Fleet Manager Frank Ortiz, and Operations Manager Elida Wilson. They travel to Wappingers Falls as necessary to oversee operations there. That is generally a 45-minute drive. When the Wappingers Falls facility first opened, some managers traveled there frequently. The two driver/dispatchers at Wappingers Falls, Aldo Leon and Carlos Rivera, had been drivers at Yonkers before accepting the Wappingers Falls positions. They are not supervisors and do not make managerial decisions or exercise substantial judgment. They do not hire, fire, discipline, grant raises, or make any other decisions, including granting or denying time off. Those decisions are made only by Marlaina or Judith Koller, the owners, in Yonkers. They merely handle dispatching duties, and drive when needed. While Leon and Rivera communicate requests to Yonkers, all decisions regarding leave and time off are made at Yonkers. Initial assignments to bus routes are made by Yonkers. If an individual calls out sick, for example, either Leon or Rivera will determine what other drivers or monitors are available to cover for them, and ask that person to do so or will do it themselves. Scheduling an available driver or monitor to cover for an unexpected absence on a given day is not a managerial decision. One of the Yonkers' supervisors comes to Wappingers Falls on a weekly basis with paychecks. That individual may distribute the checks, or may leave them with Leon or Rivera to distribute. Distributing paychecks to employees is likewise not a managerial function.

All labor relations and personnel functions are performed at Yonkers. All payroll is done at Yonkers. All hiring, firing, and disciplinary decisions are made at Yonkers by Marlaina and/or Judith. Physical exams for new hires are performed by the doctor hired by Yonkers. All employee training is conducted at Yonkers. All bus maintenance is performed at Yonkers, if the bus can be driven there. Otherwise, it will be performed by a local service station. The only exceptions are minor matters, washing windows and filling fluids such as oil, as there is no maintenance department at Wappingers Falls.

Wappingers Falls is not a functioning stand-alone facility operating independently of Yonkers. All operations are run by Yonkers, and all decisions are made by Yonkers. The two driver/dispatchers at Wappingers Falls are not managers or supervisors, and are not responsible for making significant decisions. Wappingers Falls could not function without the daily oversight of Yonkers, and it does not have a separate identity.

There are several cases somewhat similar to the instant situation where the Board has found a new employer not to be a successor. In fact, the instant situation presents a stronger case for integration than these cases.

The Respondent's facility is similar to *Dattco*, above. Like *Dattco*, all wages and benefits companywide are set by the main office. All accounting, payroll, personnel, and records functions are carried out at the main office. Timesheets and paychecks are processed and generated at the main office. All employees in both locations are subject to the same rules and policies, and only Yonkers' management may discipline, hire, or fire employees at either location. Decisions on time off are made at Yonkers. All drivers operate school buses, transporting special needs children, with monitors who assist and supervise the children. All drivers must possess the same license and receive (19a) certification. Mandatory annual training is conducted at Yonkers. There is no maintenance facility at Wappingers Falls; all periodic routine maintenance and all emergency repairs (if possible) are done in Yonkers. Bus routes are planned at the main office, assignments to routes are made by the main office (other than emergency call-outs). There are no managers or supervisors at Wappingers Falls; they travel from Yonkers as needed. There are two driver/dispatchers, who do not exercise substantial judgment. They decide what available driver or monitor will cover for another in case of an unscheduled absence, but otherwise they merely communicate information to drivers, or between drivers and parents or teachers. They relay requests or communicate emergency situations to Yonkers, from whom they receive instructions. There is no local autonomy in operations.

P.S. Elliott Services, 300 NLRB 1161 (1990), is a case where the operations were likewise integrated. The owner and all supervisors were located in the main office. There was a lead person at each jobsite, but that individual was not a supervisor. All personnel matters, hiring decisions, wage rates, and benefits were established and handled at the main office. All labor relations and employment policies were centralized; the same rules, policies, and procedures applied to all employees.

Budget Rent A Car Systems, 337 NLRB 884 (2002), is instructive as to the significance of the role of dispatchers Leon and Rivera. Although there were branch managers at the two stores at issue, their authority was limited to scheduling of employees for regular work hours. They had little or no authority, little or no input into hiring, termination, serious discipline, wages, benefits, transfers, or scheduling of overtime; control of labor relations was thus centralized. The Board found there was substantial functional integration, with some employee contact among all stores and identical job functions and terms and conditions at each store. The job functions, skills, starting wages, benefits, incentives, uniforms, and all other terms and conditions were identical in all stores. Training was centralized, and truck mechanics traveled to the stores to perform vehicle servicing.

Novato Disposal Services, 328 NLRB 820 (1999), has some commonalities with the instant case. All employees at the company's various facilities were under the supervision of the same individuals, and there was a high degree of centralized control over labor relations. There was also a significant degree of contact and interchange between the facilities, including both permanent and temporary interchange. Further, all employees had common pay and benefits, seniority, training, and employees in similar job classifications performed similar work.

Prince Telecom, 347 NLRB 789 (2006), likewise had a high degree of administrative centralization of its labor relations policies. All human resources personnel were located at headquarters, and uniform personnel policies applied to all locations. Headquarters was responsible for establishing the budget, pay scales and benefits that applied to all employees.

Training was centralized, and operations management was centralized. The area manager visited all locations, interviewed new hires, set their pay, and made all hiring, firing, and disciplinary decisions. All employees within the same classification performed the same duties and had the same skills. The company also temporarily transferred a significant number of employees (26 of 148). Unlike *Prince*, in the Respondent's situation, no one else has input into hiring, firing, or disciplinary decisions.

In *Marine Spill Response Corp.*, 348 NLRB 1282 (2006), the Board found centralized control over labor relations and personnel matters, no local autonomy, no day-to-day local supervision but evidence of common day-to-day supervision at two plants, and of regular interaction among employees and employee transfers among facilities.

There are also several cases where the Board found successorship, and where the situations were dissimilar to the instant case.

In *Esco Corp.*, 298 NLRB 837, the Board determined that there was local autonomy, as it had a lead man, overseeing operations, though he was not a statutory supervisor. That individual had authority that Leon and Rivera do not.

The instant situation is also unlike *Dean Transportation, Inc.*, 350 NLRB 48 (2007), where the employees had different job skills, different working conditions, virtually no interchange of employees, and some local autonomy such as mechanics, route planners, and supervisors. Wappingers Falls' and Yonkers' drivers and monitors have the same skills and the same working conditions. There are no mechanics, route planners, or supervisors at Wappingers Falls.

In *Van Lear Equipment, Inc.*, 336 NLRB 1059 (2001), the Board found successorship even where the new employer assumed only a discrete portion of the predecessor's operations and did not take over the entire bargaining unit. The 19 bus drivers hired by the respondent had been employed by the predecessor, doing the same jobs under generally similar working conditions, although with a different supervisor. They utilized the same production processes and serviced the same customers, and parked buses in the same lot. That is not the situation here, where most of the terms and conditions of employment changed. Additionally, the Board found that there was no interchange of employees between locations, and that the local supervisor had discretion and independence on certain matters (interviewing applicants, recommendations for hire, giving oral and written warnings, suspending employees for drug and alcohol, or safety infractions. In the instant case, there was significant interchange of employees initially, and there is no local individual with any similar labor relations authority. All such decisions are made at Yonkers.

Stewart Granite Enterprises, 255 NLRB 569 (1981), is of interest because the new employer retained all the predecessor's production employees when it acquired the plant. It continued to operate the plant, producing the same products with essentially the same customers. It desired to keep the predecessor's production employees in order to perform the same production tasks without the necessity of training a new work force. In addition, the new employer sought former employees of the predecessor when additional staff was needed, for the same reason. That situation is different from the instant case, in that the changes there were

superficial, and all employees were retained. The employees continued to work at the same location doing the same tasks in the same manner as they previously had. The Respondent herein, did not take over the location or any of the equipment used by Durham. It did not retain any of Durham's employees; it hired individuals who worked for Durham and then quit when they accepted positions with the Respondent. The Respondent also had significantly different procedures than Durham.

In *Bronx Health Plan*, 326 NLRB 810 (1998), the Board found continuity of operations although the group hired by that employer was only a small fraction of all the bargaining unit employees covered by the collective-bargaining agreement. The new employer continued the same operation, in the same location, performing the same services in the same manner, and hired the same employees and supervisors to perform the same duties with no hiatus. Again, none of that applies to the instant situation.

For these reasons, I find that the following factors have been met.

I find that the Wappingers Falls facility has a community of interest with Yonkers, in that both operate under the same managers and supervisors, with the same company policies, benefits, and wage structure.

I find that Yonkers exercises central control over the daily operations and labor relations at the Wappingers Falls facility, and that there is no local autonomy at Wappingers Falls whatsoever.

I find that there is some employee interchange between Wappingers Falls and Yonkers, though it is limited. At the beginning of the Dutchess County contract in 2014, there was significant interchange as numerous Yonkers drivers and monitors temporarily worked the new Dutchess County routes, either shuttling daily between the two facilities or staying at a Poughkeepsie area hotel. There is no evidence that any Wappingers Falls drivers or monitors have ever temporarily worked out of Yonkers.

I find that the drivers and monitors at Wappingers Falls and Yonkers have identical skills and functions, and similar working conditions. All drivers have the same training and certifications, and all monitors receive the same training, since the Company provides bus services only for special education and special needs children. All drivers receive the same training, in the same location, from the same trainer. All drive similar buses. The same work rules and company policies apply to all employees at both locations. The same wage scale and benefits apply to all employees. All employees work for the same supervisors and managers. All celebrations such as holiday parties are held for both facilities in the Yonkers area. Working conditions are similar but not identical, since Wappingers Falls is a satellite facility and has no supervisors or managers permanently stationed there, and there is no maintenance department there. However, all employees at both locations report to the same supervisors and managers, who are in Yonkers. There are two dispatchers in Wappingers Falls, so the employees deal with different dispatchers than the Yonkers' employees.

I find that the Wappingers Falls facility is 54 miles from headquarters in Yonkers, usually a 45-minute drive.

There is no bargaining history at Allways East, as the Company has always been nonunion.

5 I find, therefore, that Wappingers Falls is not an appropriate stand-alone bargaining unit.

Conclusions

10 Since I find that there is no substantial continuity of operations between Durham School Services and the Respondent, and that the Wappingers Falls facility is not an appropriate stand-alone bargaining unit, I conclude that the Respondent is not a successor to Durham School Services.

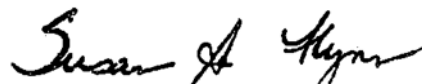
15 Since I find that the Respondent is not a successor to Durham School Services, it follows that it had no obligation to recognize and bargain with the Union, no obligation to notify the Union of its decision to terminate Sherry Siebert's employment and bargain over that decision, no obligation to respond to union information requests, and it did not unlawfully change the wage rates of employees.

20 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

25 The complaint is dismissed.

Dated, Washington, D.C. November 12, 2015

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Susan A. Flynn
Administrative Law Judge

⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.